

Appl. No. 09/828,714
Amdt. Dated July 20, 2005
Reply to Office Action of August 27, 2004

REMARKS/ARGUMENTS

Favorable reconsideration of this application is requested in view of the amendments made above and the remarks that follow. A petition to revive under 37 CFR 1.137(b) is attached, along with the applicable fee.

The present invention comprises a smart card and smart card authorization system that provide standardization through the use of a fixed data file structure and/or middleware on the card that permits sharing data and/or value between a smart card issued to a user and a point of sale system in an entertainment, theater, restaurant, retail business or other venue, thereby allowing various multiple point-of-sale systems having middleware associated with the card file structure or other middleware on the card to recognize and access the smart card regardless of upper level user interfaces.

The smart card is utilized in a transaction system that includes at least one smart card authorization device, a communication interface, and a transaction verification server. The smart card authorization device interacts with a defined data file structure provided on a smart card of the type described above.

An application program interface or middleware utilizes a predefined set of commands to control the reading and writing of data to the memory card based on the defined data structure. A mechanism is provided for encrypting and decrypting on the fly data read from and written to said encrypted field. The predefined commands include a set of general commands, a set of read commands and a set of write commands.

The standardized fixed card file structure allows all point-of-sale systems to readily recognize, accept and reject a smart card, which insures cross platform interoperability. If a smart card is accepted, the point-of-sale system can communicate with the smart card regardless of the upper level user interface.

The patent to Kawan (6,289,324) requires a transaction authentication server to function. In contrast, authentication in the present invention can be performed by the middleware at the terminal PC or reading and writing device, and the use of a transaction or database server is

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optional. In Kawan, only a software application program is in the control of communicating through the user to a smart card. In contrast, the invention utilizes middleware such as APIs, OCXs, Active X controls, libraries, and DLLs that are independent but linked to a specific software application program that would control the communication to a card's contents and files. This difference permits many software application programs using the same middleware to communicate to the contents and files of the card in the present invention. Kawan does what all prior smart card software applications have done in the past, by pre-defining a set of general commands that read and write from the software application program. This is significantly different from the middleware approach in the present invention.

Griswold (6,629,591) is directed to a specific form factor, not to a smart card. The token of Griswold is designed and intended for a single use application and does not anticipate multiple functions through the use of differing data storage. The Griswold system involves a custom computer or a dedicated device that is tied to a single application, reading device and software application. This differs from the present invention that comprises a smart card having specific fields that can be used for a plurality of functions and data storage. By having separate and distinct fields for value and for display and tickets, etc, security is increased by being able to control access to these areas independently, vis-a-vis deferring devices and applications. In Griswold, the data stored is all on the system and is not written to the token until the end of play. Col. 10, lines 23-24. The Griswold system anticipates a different physical use mechanism where the token is completely swallowed or held until play is terminated.

It is submitted that there is no motivation or suggestion in either Kawan or Griswold of combining them to produce the invention claimed herein. Even if one were modified in view of the other as proposed in the Office Action, the claimed invention would not result.

To establish obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art

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reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)

If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, or require a substantial reconstruction and redesign of the elements shown in the primary reference, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 122 USPQ 349 (CCPA 1959).

For the above reasons, it is believed that the claims as now amended are patentable and allowable.

Respectfully submitted,
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